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10/708,440

03/03/2004

Uri Gofman

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ERIC SCHNEIDER  
1730 SOUTH FEDERAL HWY  
#104  
DELRAY BEACH, FL 33483

EXAMINER

VEZERIS, JAMES A

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/708,440	<b>Applicant(s)</b> GOFMAN ET AL.	
	<b>Examiner</b> JAMES A. VEZERIS	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Detailed Action**

#### **Election/Restriction Response**

1. Applicant's election without traverse of claims 1-66 in the reply filed on 5/19/2008 is acknowledged.
2. Claims 1-66 are currently pending.

#### **Claim Rejections- 35 U.S.C. 101 Rejections**

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-4 of the claimed invention are directed to non-statutory subject matter.

A property investment instrument is being viewed by the examiner as a contract and is therefor non-statutory subject matter.

5. Claims 5-66 of the claimed invention are directed to non-statutory subject matter.

According to the latest case law in order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter. In the instant case no apparatus is claimed nor is any transformation of underlying subject matter occurring.

**Claim Rejections- 35 U.S.C. 112 2<sup>nd</sup> Paragraph**

6. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It appears to the examiner that in contrast to claim 9, the applicant tries to have the first entity provide a first amount of capital to the second entity, even though the first amount of capital was given to the owner of the property in claim 1.

7. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It appears to the examiner that from claim 9 the second entity is obligated to repay the lender, it is not clear how or why the first entity takes over the repayment.

8. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Pending off of claim 16, claim 17 will be reviewed, in view of the examiner's interpretation of claim 16. Said repaying of said lender will be done by the second entity.

9. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The goal of property acquisition and selling for most

individuals is realizing a return on the investment. The applicant fails to explain how the realization of a return occurs.

### **Claim Rejections- 35 U.S.C. 102(e)**

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-66 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,594,633 to Broerman et al. (Hereinafter "Broerman") Examiner notes that due to confusion from the above 112 2<sup>nd</sup> paragraph rejections, the best possible rejection was made upon the examiner's interpretation of the claims.

### **Regarding Claim 9:**

Broerman teaches a first entity and a second entity investing in a property comprising:

said first entity obtaining a first amount of capital for an owner of said property in exchange for transferring title of said property to said second entity,

said second entity having at least one of a loan obtainment ability, mortgage obtainment ability, and credit obtainment ability;

said second entity obtaining a loan for a second amount of capital from a lender by using said property as collateral wherein said loan includes a loan obligation to repay said lender; and,

said second entity transferring at least a portion of said second amount of capital to said first entity.

(See figures 6-10, columns 9-18)

**Regarding Claim 10:**

Broerman further teaches

creating a property investment instrument for investing in said property, said property investment instrument including at least one contractual agreement between said first entity and said second entity. (See figures 6-10, columns 9-18)

**Regarding Claim 11:**

Broerman further teaches

executing said at least one contractual agreement before said first entity obtains said first amount of capital for said owner of said property. (See figures 6-10, columns 9-18)

**Regarding Claim 12:**

Broerman further teaches

wherein at least one of a obtaining said first amount of capital, transferring said title of said property to said second entity, obtaining said loan for said second amount of capital from said lender by using said property as collateral, and transferring said at least a portion of said second amount of capital to said first entity is performed in

accordance with said at least one contractual agreement. (See figures 6-10, columns 9-18)

**Regarding Claim 13:**

Broerman further teaches including at least one of a first entity and second entity requesting a current report indicative of financial health of said property investment. (See figures 6-10, columns 9-18)

**Regarding Claim 14:**

Broerman further teaches said first entity said obtaining said first amount of capital for said owner of said property in exchange for said transferring said title of said property to said second entity includes said first entity providing said first amount of capital to said second entity and said second entity providing said first amount of capital to said owner of said property in exchange for said transferring said title of said property to said second entity. (See figures 6-10, columns 9-18)

**Regarding Claim 15:**

Broerman further teaches  
encumbering said property with a non-recourse promissory note until said second entity transfers said at least a portion of said second amount of capital to said first entity. (See figures 6-10, columns 9-18)

**Regarding Claim 16:**

Broerman further teaches  
said first entity repaying said lender.

**Regarding Claim 17:**

Broerman further teaches

encumbering said property with a master lease agreement after said second entity transfers said at least a portion of said second amount of capital to said first entity and until said repaying said lender. (See figures 6-10, columns 9-18)

**Regarding Claim 18:**

Broerman further teaches second amount of capital is greater than or equal to said first amount of capital. (See figures 6-10, columns 9-18)

**Regarding Claim 19:**

Broerman further teaches said property is a first property and further including said first entity acquiring a second property with at least a portion of said second amount of capital. (See figures 6-10, columns 9-18)

**Regarding Claim 20:**

Broerman further teaches

said owner indicating to said first entity that said property could be available for acquisition. (See figures 6-10, columns 9-18)

**Regarding Claim 21:**

Broerman further teaches

choosing said property for acquisition from a plurality of properties. (See figures 6-10, columns 9-18)

**Regarding Claim 22:**

Broerman further teaches property is chosen by at least one of a first entity, second entity, and property broker. (See figures 6-10, columns 9-18)



**Regarding Claim 23:**

Broerman further teaches choosing said property for acquisition includes qualifying said property based on at least one criteria.

**Regarding Claim 24:**

Broerman further teaches at least one criteria is at least one of a loan-to-value ratio, down payment amount, appraisal value, sale price, purchasing formula, and operational formula. (See figures 6-10, columns 9-18)

**Regarding Claim 25:**

Broerman further teaches operational formula includes estimating costs on said property for a period, said costs including at least one of a rental price, usage factor, management fee, maintenance fee, property expense, utility expense, principal payment, interest payment, tax payment, and insurance payment. (See figures 6-10, columns 9-18)

**Regarding Claim 26:**

Broerman further teaches said purchasing formula includes comparing a total initial investment needed for at least one of an acquiring said property and restoring said property in relation to refinancing said property for an appraised value after acquiring said property. (See figures 6-10, columns 9-18)

**Regarding Claim 27:**

Broerman further teaches total initial investment is an amount of capital less than or equal to said second amount of capital. (See figures 6-10, columns 9-18)

**Regarding Claim 28:**

Broerman further teaches property is a real property and further including rehabilitating said real property. (See figures 6-10, columns 9-18)

**Regarding Claim 29:**

Broerman further teaches including qualifying a loan obtainment ability of said second entity based on at least one loan obtainment criteria. (See figures 6-10, columns 9-18)

**Regarding Claim 30:**

Broerman further teaches loan obtainment criteria includes at least one of a credit score, income, debt, assets, and length of employment. (See figures 6-10, columns 9-18)

**Regarding Claim 31:**

Broerman further teaches managing said property after said transferring said title of said property to said second entity. (See figures 6-10, columns 9-18)

**Regarding Claim 32:**

Broerman further teaches managing said property includes establishing an agreement between said first entity and a property manager to manage at least one of a maintenance, payment, and occupancy of said property. (See figures 6-10, columns 9-18)

**Regarding Claim 33:**

Broerman further teaches said loan is obtained from an originated lender and said loan is at least one of a mortgage, line of credit, and line of equity. (See figures 6-10, columns 9-18)

**Regarding Claim 34:**

Broerman further teaches said originated lender can liquidate said loan in a secondary market. (See figures 6-10, columns 9-18)

**Regarding Claim 35:**

Broerman further teaches said first entity and said second entity is either an individual or organization. (See figures 6-10, columns 9-18)

**Regarding Claim 36:**

Broerman further teaches said organization is at least one of a corporation, partnership, limited liability company, club with membership, union, a group including one or more individuals. (See figures 6-10, columns 9-18)

**Regarding Claim 37:**

Broerman further teaches  
disposing of said property in such a manner as to allow at least one of a first entity and second entity to realize a return on said property investment instrument. (See figures 6-10, columns 9-18)

**Regarding Claim 38:**

Broerman further teaches at least one contractual agreement includes at least one of a promissory note, an equity partner agreement, a master lease agreement, an open-end commercial mortgage, and a power of attorney agreement. (See figures 6-10, columns 9-18)

**Regarding Claims 1-8 and 38-66:**

Claims 1-8 and 38-66 are analogous to claims 9-38 and are rejected for the same reasoning.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES A. VEZERIS whose telephone number is (571)270-1580. The examiner can normally be reached on Monday-alt. Fridays 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A. Kramer/  
Supervisory Patent Examiner, Art Unit 3693

/JAMES A VEZERIS/  
Examiner, Art Unit 3693

8/28/2008